

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DESMOND JAMES)	
)	
Plaintiff,)	
)	
v.)	No. 08 C 1758
)	
CHICAGO POLICE OFFICERS)	
T. X. OATES (Star No. 13798))	
F.M. JACINTO (Star No. 16472))	
CITY OF CHICAGO, ILLINOIS,)	
)	
Defendants)	

**DEFENDANTS' JOINT MOTION
TO DISMISS THE MATTER WITHOUT PREJUDICE OR,
IN THE ALTERNATIVE, STAY THE PROCEEDINGS**

Defendants, City of Chicago, by its attorney, Mara S. Georges, Corporation Counsel of the City of Chicago, and Defendants Terrence Oates and Fernando Jacinto, (referred to as "Defendant Officers"), by one of their attorneys, Thomas H. Freitag, respectfully request this Honorable Court to dismiss the matter without prejudice or, in the alternative, stay the proceedings herein until completion of the Plaintiff's underlying state criminal case. In support thereof, Defendants state as follows:

1. On or about April 28, 2008, plaintiff, Desmond James filed a Amended Complaint pursuant to 42 U.S.C. § 1983 and § 1988, which alleges that Defendant Officers falsely arrested him, along with due process claim, conspiracy claim and malicious prosecution claim, all in relation to his arrest on August 5, 2007. (*See Plntff's Cmplt, Doc. 8. ¶ 6*)

2. As part of the underlying incident on August 5, 2007, Plaintiff was arrested and charged with multiple counts of driving under the influence of alcohol, failure to keep in lanes, and leaving the scene of an accident.¹

¹ Defendants have been actively trying to obtain a certified disposition/status of the criminal case from the Circuit Court of Cook County, Traffic Court, but to no avail, as of today's date.

3. Plaintiff's criminal case under tickets # TM538170, TM538171, and TM538172, is still pending in the Circuit Court of Cook County, Traffic Division, and the next court date is July 8, 2008.

4. Under the abstention doctrine, federal courts should not entertain a claim for damages under 42 U.S.C. § 1983 if disposition of that civil action would involve ruling on issues in dispute in a pending state criminal proceeding. *Crump v. Lane*, 807 F.2d 1394, 1400 n. 5 (7th Cir. 1986)(citing *Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746 (1971)). In the interest of comity, the *Younger* court ruled that federal courts should abstain from enjoining ongoing state proceedings absent extraordinary circumstances. *Younger*, 401 U.S. at 53.

5. The Seventh Circuit Court of Appeals has extended the *Younger* abstention doctrine to federal suits seeking monetary relief for misconduct in an underlying, pending state criminal case. *Simpson v. Rowan*, 73 F.3d 134, 137-38 (7th Cir. 1995), cert. denied 519 U.S. 833 (1996). Such a scenario is present in the instant case.

6. Plaintiff seeks monetary damages, alleging that Defendant Officers falsely arrested him, along with a due process claim, conspiracy claim and malicious prosecution claim. Plaintiff's pending criminal case directly impacts his federal civil rights claims for false arrest, due process, conspiracy, malicious prosecution and *Respondeat Superior*, as they may be barred as a matter of law. Accordingly, the potential for federal-state friction is evident, as any federal judgment in Plaintiff's Section 1983 lawsuit would have a substantially disruptive effect on his ongoing state criminal proceedings. See *Simpson*, 73 F.3d at 137 n. 6, 138 (citations omitted).

7. In accordance with *Younger*, and the Seventh Circuit's extension of that doctrine in *Simpson*, Defendants request that this Court grant their joint motion to dismiss the matter without prejudice or, in the alternative, stay Plaintiff's Section 1983 lawsuit for monetary relief while Plaintiff's criminal case is still pending in state court.

WHEREFORE, Defendants respectfully request this Court grant their motion to dismiss the matter without prejudice or, in the alternative, stay the proceedings until the conclusion of Plaintiff's underlying state criminal case.

Respectfully submitted,

MARA S. GEORGES
Corporation Counsel
City of Chicago

TERRENCE OATES, and
FERNANDO JACINTO

/s/ Thomas H. Freitag
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